morals. The fact that the people of Villa Grove believe that the sale of intoxicating liquor is a public evil, together with their action in passing this ordinance, should make it apparent to the court that the public morals were endangered, as the people believe, by this kind of advertising. "In doubtful cases where things may or may not be a nuisance, depending on a variety of circumstances requiring judgment and discretion on the part of the town authorities in exercising their legislative function, under a general grant of power, * * * * their action under such circumstances would be conclusive of the question." *North Chicago Ry. Co.* v. *Lake View,* 105 Ill. 207. It is submitted that the ordinance was a proper police regulation passed to protect the public morals. Another question remains, was the police regulation, as thus justified, reasonable?

The opinion in the principal case does not aid very much in working out an answer to this question. To place advertisements of intoxicating liquor in the same class with advertisements of chewing gum or Coca-Cola, is not a fair classification, especially in view of the fact that the sale of intoxicating liquor is prohibited in the community. "With the wisdom of the exercise of that judgment the court has no concern; and unless it clearly appears that the enactment has no substantial relation to a proper purpose, it cannot be said that the limit of legislative power has been transcended. To hold otherwise would be to substitute the judicial opinion of expediency for the will of the legislature, a notion foreign to our constitutional system." *Purity Extract & Tonic Co.* v. *Lynch,* supra. It cannot be said that there was no reasonable ground for the enactment of this ordinance in view of the fact that the city of Villa Grove considered this a measure which would aid the prohibition of the sale and use of intoxicating liquor. It is submitted that the ordinance was passed to protect the public morals and was a reasonable measure adopted to secure the end sought. R. E. R.

CONSTRUCTIVE TRUST ARISING FROM BREACH OF PAROL CONTRACT TO PURCHASE LAND FOR ANOTHER.—In the case of *Harrop, et al. v. Cole, et al.* (N. J. 1915), 95 Atl. 378, the Court of Chancery of New Jersey took a definite stand in favor of establishing a constructive trust, on behalf of a principal, in land purchased by an agent under a parol contract to do so and paid for by the agent's own money. The agent in this case while bound in confidence to purchase for complainant, violated his duty, purchased the land with his own money and took a deed thereof to himself. Upon a bill in equity the court held in favor of the complainant, and decreed that a trust in the lands be established and that defendant execute the trust by conveying the land to complainant upon payment of the price.

The question has been litigated many times and the result is a confusing mass of decisions which may be grouped into two lines of authorities. The case that seems to be regarded as establishing the rule for one of these lines is the English case of *Bartlett* v. *Pickersgill,* 1 Eden, 515, cited in 1 Cox 15, 4 Burr. 2255. The principle of law laid down in that decision is

stated in 2 SUGDEN, VENDORS, (14th Ed.) 703, in this way: "Where a man merely employs another person by parol as an agent to buy an estate, who buys it for himself and denies the trust, and no part of the purchase money is paid by the principal and there is no written agreement, he cannot compel the agent to convey the estate to him, as that would be directly in the teeth of the statute of frauds; even if the agent be afterwards convicted of perjury in denying the trust." The rule was followed in *James* v. *Smith* [1891] 1 Ch. 384, although expressions of disapproval of *Bartlett* v. *Pickersgill* had already appeared in *Heard* v. *Pilley,* L. R. 4 Ch. 548. Some American decisions that have sanctioned this rule are: *Hidden* v. *Jordan,* 21 Cal. 93; *Walter* v. *Klock,* 55 Ill. 362; *Allen* v. *Richard,* 83 Mo. 55; *Parsons* v. *Phelan,* 134 Mass. 419; *Wheeler* v. *Hall,* 66 N. Y. Supp. 257; *Burden* v. *Sheridan,* 36 Iowa 125; *Nash* v. *Jones,* 41 W. Va. 769.

By the rule followed in the other line of authorities, which was early applied in *Lees* v. *Nuttall,* 1 Russ & M. Ch. 53, and lately applied in New Jersey in the principal case, it is held that where an agent, employed by parol to purchase land for his principal, does, in violation of his duty, purchase for himself with his own money, he may be declared a trustee holding the land for his principal. The English courts have at different times sanctioned this principle of law. *Cave* v. *Mackensie,* 46 L. J. (Ch.) 564; *McCormick* v. *Grogan,* 1 Eq. 313, L. R. 4 H. L. 82; *Taylor* v. *Salmon,* 4 My. & C., 134. The American decisions have gone through somewhat the same conflict in regard to these two opposing rules; in addition to the conflict there between the courts of different states, both rules have even been applied within some individual states. This may be illustrated by comparing *Dodd* v. *Wakeman,* 26 N. J. Eq. 484, or *Nestal* v. *Schmid,* 29 N. J. Eq. 460 with the principal case, or *Barnard* v. *Jewett,* 97 Mass. 87 with *Kendall* v. *Mann,* 93 Mass. 15.

Variations of one or the other of these rules are found in a few cases. A distinction has been drawn where the agent was employed to take the property in the name of the principal and where he was to take title in his own name in trust for the principal. A trust would be declared in the former, on the ground that the breach is purely one of a contract of agency, and denied in the latter. But the great majority of the cases ignore any distinctions of this kind and hold that there shall be a trust because of the breach of confidence or that there shall not be a trust because of the statute of frauds. *Johnson* v. *Hayward, et al,* 74 Neb. 157, 103 N. W. 1058, 5 L. R. A. (N. S.) 112; *Rose* v. *Hayden,* 35 Kan. 106.

The principal case asserts that the trend of the modern authorities is decidedly in favor of establishing a trust. *Johnson* v. *Hayward,* 74 Neb. 157, 103 N. W. 1058, and *Jackson* v. *Pleasonton,* 95 Va. 654, 29 S. E. 680, are two comparatively recent decisions aiding to substantiate this assertion. Whatever be the weight of authority, each rule has its advantages. The one is effective in relieving against fraud and the other gives full force to the statute of frauds. Both attempt to accomplish the same general result, but in any specific case they are directly opposed in accomplishing that end. The fact that the cases have taken these different views has per-

haps given rise to the confusion in classifying the trust when established. It is more properly classified as a constructive trust than as a resulting trust. 1 POM. EQ., § 155, 1 PERRY, TRUSTS, § 166. The reason is that they are usually declared because of the violation of duties arising out of a fiduciary relation instead of upon the theory of ratification of an act of an agent. H. M. R.